

# KPS CONSULTING

“Building an Access Bridge in Technology and Telecommunications”

3508 Albemarle Street, NW  
Washington, DC 20008  
202.641-3849  
[kpsconsulting@starpower.net](mailto:kpsconsulting@starpower.net)

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December 15, 2005

Marlene Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Re: **Ex Parte Presentation**  
CG Docket No. 03-123

Dear Ms. Dortch:

On December 14, 2005, the undersigned met with Jessica Rosenworcel of the Office of Commissioner Copps to discuss the problems that consumers confront when a provider prohibits video relay service (VRS) consumers from accessing other providers. Refusing access to multiple providers through restrictive practices that tie the provision of consumer equipment or services to a single provider denies functionally equivalent communication services required under section 225.

The following differences between cell phones and VRS were noted:

- When a VRS provider denies a consumer the ability to access multiple VRS providers from its equipment, it leaves that consumer with no choice but to acquire multiple devices if that consumer wants access to more than one provider. Individuals who do use multiple devices, however, run the risk of missing incoming calls when those calls are either directed to the device that is not turned on or routed to the wrong device by an Internet router. This is discriminatory, not in keeping with the functionally equivalent mandates of Section 225, and extremely dangerous in the event of an emergency. Cell phone users do not have this problem – they

can call and receive calls from any other cell phone user, regardless of the carrier that each uses.

- While it is true that cell phones are typically tied to the provision of service, the cell phone industry is a privately-operated industry whose business policies and operations are driven by competitive marketplace trends. Because the cell phone industry is highly competitive, companies must respond to subscriber demands; in turn, subscribers are able to benefit from considerable choice in their selection of wireless phones and services. In contrast, VRS is a federally operated program, whose funding is provided solely through a federally administered fund. Rates for VRS are not driven by consumer demand or activity; rather they are set exclusively by the FCC. Nor do VRS consumers have the same level of choice in VRS equipment or the same level of control over the operations of VRS providers as do cell phone users.
- On a number of occasions, the FCC has explained that VRS is a public accommodation under the Americans with Disabilities Act. As such, it comes with a long list of mandatory minimum standards, all of which are designed to ensure functionally equivalent service that can bring deaf and hard of hearing people into the mainstream of society. In other words, VRS is subject to a specific set of rules that are intended to bring a particular service to a particular population in order to curb disability discrimination. There are no similar rules and regulations for cell phone use.
- Wireless calls take place over networks that are not dependent on the availability of any specific personnel. Accordingly, when an individual picks up a cell phone to make a call, so long as cell phone service is available, that individual can get through to the called party in a matter of seconds. In sharp contrast, because VRS is dependent on the availability of sign language interpreters, it is common to experience delays in completing a call. Blocking practices make extremely poor use of the limited number of interpreter services in the United States. So long as blocking is permitted, VRS users will not be able to make calls with the same speed and facility as either wireless or wireline users.
- The Commission has already issued clear orders directing network neutrality over the Internet. The FCC's overriding interest in keeping network architecture open and interoperable among communication carriers was, for example, demonstrated in the Commission's decision to fine Madison River Telephone Company for blocking its ports to calls made over the Internet. The decision

was brought under the authority of Section 201(b) (requiring carriers to provide “just and reasonable” communication service practices). No recent similar decisions have been issued concerning cell phone access.

- The ADA was originally drafted to make TRS functionally equivalent to wireline services. Voice users are able to dial around their pre-subscribed existing long distance simply by dialing a 10-10-XXX number. This is not possible for VRS users that are blocked from accessing other providers.

This letter is being filed electronically.

Sincerely,

A handwritten signature in black ink that reads "Karen Peltz Strauss". The signature is written in a cursive style with a long, sweeping underline.

Karen Peltz Strauss  
Legal Consultant, CSD